

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Case No. 01-1139 (JKF)  
. .  
W.R. GRACE & CO., .  
et al., . USX Tower - 54th Floor  
. 600 Grant Street  
. Pittsburgh, PA 15219  
Debtors. .  
. September 14, 2009  
. 8:42 a.m.  
. . . . .

TRANSCRIPT OF PLAN CONFIRMATION HEARING  
BEFORE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP  
By: DAVID BERNICK, ESQ.  
LISA G. ESAYIAN, ESQ.  
200 East Randolph Drive  
Chicago, IL 60601  
  
For the Asbestos Creditors Committee: Caplin & Drysdale, Chartered  
By: NATHAN FINCH, ESQ.  
One Thomas Circle, NW  
Washington, D.C. 20005  
  
For the Future Claimants Representatives: Orrick, Herrington & Sutcliffe, LLP  
By: ROGER FRANKEL, ESQ.  
JONATHAN GUY, ESQ.  
Washington Harbour  
3050 K Street, N.W.  
Washington, D.C. 20007

Audio Operator: Janet Heller

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

---

J&J COURT TRANSCRIBERS, INC.  
268 Evergreen Avenue  
Hamilton, New Jersey 08619  
E-mail: [jjcourt@optonline.net](mailto:jjcourt@optonline.net)

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES (CONT'D):

For the Libby Claimants: Lewis, Slovak & Kovacich, P.C.  
By: TOM L. LEWIS, ESQ.  
725 Third Avenue North  
Great Falls, MT 59401

McGarvey, Heberling, Sullivan and  
McGarvey, P.C.  
By: JON HEBERLING, ESQ.  
JOHN LACEY, ESQ.  
725 Third Avenue North  
Great Falls, MT 59401

Cohn Whitesell & Goldberg, LLP  
By: DANIEL C. COHN, ESQ.  
101 Arch Street  
Boston, MA 02110

For Arrowwood: Wilson, Elser, Moskowitz, Edelman,  
& Dicker, LLP  
By: CARL J. PERNICONE, ESQ.  
150 East 42nd Street  
New York, NY 10017

O'Melveny & Myers, LLP  
By: TANCRED SCHIAVONI, ESQ.  
Times Square Tower  
Seven Times Square  
New York, NY 10036

For BNSF Railway: Pepper Hamilton, LLP  
By: LINDA CASEY, ESQ.  
BOB PHILLIPS, ESQ.  
JAMES CARIGNAN, ESQ.  
3000 Two Logan Square  
Philadelphia, PA 19103

For CNA: Goodwin Procter, LLP  
By: MICHAEL GIANNOTTO, ESQ.  
Exchange Place  
Boston, MA 02109-2881

For Fireman's Fund: Stevens & Lee  
By: MARNIE SIMON, ESQ.  
600 College Road East, Suite 4400  
Princeton, NJ 08540

J&J COURT TRANSCRIBERS, INC.

APPEARANCES (CONT'D):

For Maryland Casualty: Connelly Bove Lodge & Hutz, LLP  
By: JEFFREY WISLER, ESQ.  
The Nemours Building  
1007 North Orange Street  
Wilmington, DE 19899

For MCC & Zurich: Eckert Seamans  
By: EDWARD D. LONGOSZ, ESQ.  
1747 Pennsylvania Avenue, NW  
Suite 1200  
Washington, DC 20006

Wiley Rein, LLP  
By: RICHARD A. IFFT, ESQ.  
1776 K Street NW  
Washington, DC 20006

For Ford, Marrin, Esposito, Witmeyer & Gleser, LLP: Ford, Marrin, Esposito, Witmeyer & Gleser, LLP  
By: ELIZABETH M. DeCRISTOFARO, ESQ.  
Wall Street Plaza, 23rd Floor  
New York, NY 10005-1875

For Kaneb Pipe Line Operating Partnership, LP: Fulbright & Jaworski  
By: STEVE PIERCE, ESQ.  
300 Convent Street, Suite 2200  
San Antonio, TX 78205-3792

For Travelers: Simpson Thacher  
By: ELISA ALCABES, ESQ.  
425 Lexington Avenue  
New York, NY 10017

For State of Montana Dept. of Environmental Quality: Womble Carlyle Sandridge & Rice  
By: FRANCIS MONACO, ESQ.  
222 Delaware Avenue, Suite 1501  
Wilmington, DE 19801

For AXA Belgium: Tucker Arensberg, P.C.  
By: MICHAEL A. SHINER, ESQ.  
1500 One PPG Place  
Pittsburgh, PA 15222

Mendes & Mount  
By: EILEEN McCABE, ESQ.  
750 Seventh Avenue  
New York, NY 10019

J&J COURT TRANSCRIBERS, INC.

APPEARANCES (CONT'D):

For Committee of Asbestos Personal Injury Claimants:	Campbell & Levine By: MARK T. HURFORD, ESQ. 800 North King Street Suite 300 Wilmington, DE 19701
For Kaneb Pipe Line Operating Partnership, LP:	Gilbert & Renton, LLC By: ROBERT GILBERT, ESQ. 344 North Main Street Andover, MA 01810
For Garlock Sealing Technologies:	Robinson, Bradshaw & Hinson, P.A. By: GARLAND CASSADA, ESQ. RICHARD WOLF, ESQ. 101 North Tryon Street Suite 1900 Charlotte, NC 28246
For Federal Insurance Company:	Cozen O'Connor By: JACOB C. COHN, ESQ. 1900 Market Street Philadelphia, PA 19103
For Sealed Air:	Skadden, Arps, Slate, Meagher & Flom, LLP By: DAVID TURETSKY, ESQ. J. GREGORY ST. CLAIR, ESQ. One Rodney Square Wilmington, DE 19801
For National Union Fire Insurance Co.:	Zeichner Ellman & Krause, LLP By: MICHAEL DAVIS, ESQ. 575 Lexington Avenue New York, NY 10022
For the Unsecured Creditors' Committee:	Strook & Strook & Lavan By: ARLENE KRIEGER, ESQ. KENNETH PASQUALE, ESQ. 180 Maiden Lane New York, NY 10038
For Continental Casualty Co.:	Goodwin Procter, LLP By: DANIEL GLOSBAND, ESQ. Exchange Place Boston, MA 02109-2881

J&J COURT TRANSCRIBERS, INC.

APPEARANCES (CONT'D):

For Fireman's Fund Insurance Co.: Crowell & Moring LLP  
By: LESLIE A. DAVIS, ESQ.  
MARK PLEVIN, ESQ.  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004

For One Beacon Ins. Co., Geico, Seaton Ins. Co. & Republic Ins. Co: Drinker Biddle & Reath LLP  
By: MICHAEL F. BROWN, ESQ.  
JEFFREY M. BOERGER, ESQ.  
One Logan Square  
18th and Cherry Streets  
Philadelphia, PA 19103

Drinker Biddle  
By: WARREN PRATT, ESQ.  
1100 N. Market Street  
Wilmington, DE 19801-1254

TELEPHONIC APPEARANCES:

For the Debtors: Kirkland & Ellis, LLP  
By: JANET BAER, ESQ.  
ELLI LEIBENSTEIN, ESQ.  
200 East Randolph Drive  
Chicago, IL 60601

For the Debtors: Kirkland & Ellis, LLP  
By: THEODORE FREEDMAN, ESQ.  
CHRISTOPHER GRECO, ESQ.  
CLEMENT YEE, ESQ.  
Citigroup Center, 153 East 53rd St.  
New York, NY 10022

For the Debtors: Pachulski, Stang, Ziehl & Jones  
By: JAMES O'NEILL, ESQ.  
919 North Market Street, 17th Floor  
Wilmington, DE 19899-8705

For Various Claimant Firms: Stutzman, Bromberg, Esserman & Plifka  
By: DAVID J. PARSONS, ESQ.  
2323 Bryan Street, Suite 2200  
Dallas, TX 75201

For Morgan Stanley Senior Funding, Inc.: Katten Muchin Roseenman, LLP  
By: JEFF FRIEDMAN, ESQ.  
MERRITT PARDINI, ESQ.  
575 Madison Avenue  
New York, NY 10022-2585

J&J COURT TRANSCRIBERS, INC.

TELEPHONIC APPEARANCES (CONT'D):

For Morgan Stanley Senior Funding, Inc.: Edwards Angell Palmer Dodge, LLP  
By: ROBERT CRAIG MARTIN, ESQ.  
919 N Market St.  
Wilmington, DE 19801-3023

For Serengeti: Vinson & Elkins, LLP  
By: ARI BERMAN, ESQ.  
Trammell Crow Center  
2001 Ross Avenue, Suite 3700  
Dallas, TX 75201

For Scott Company: Vorys, Sater, Seymour & Pease, LLP  
By: TIFFANY COBB, ESQ.  
52 East Gay Street  
Columbus, OH 43216

For Official Committee of Asbestos Property Damage Claimants: Dies & Hile, LLP  
By: MARTIN DIES, ESQ.  
1601 Rio Grande, Suite 330  
Austin, TX 78701

LECG  
By: ELIZABETH DEVINE, ESQ.  
1725 Eye Street NW, Ste 800  
Washington, DC, 20006

For the Property Damage Committee: Bilzin Sumberg Baena Price & Axelrod LLP  
By: MATTHEW KRAMER, ESQ.  
200 South Biscayne Boulevard  
Suite 2500  
Miami, FL 33131

For the Property Damage Committee: Bilzin Sumberg Baena Price & Axelrod LLP  
By: SCOTT BAENA, ESQ.  
JAY SAKALO, ESQ.  
200 South Biscayne Boulevard  
Suite 2500  
Miami, FL 33131

J&J COURT TRANSCRIBERS, INC.

Return

TELEPHONIC APPEARANCES (CONT'D):

For the Bank Lenders: Paul Weiss Rifkind Wharton &  
Garrison, LLP  
By: MARGARET PHILLIPS, ESQ.  
REBECCA ZUBATY, ESQ.  
ANDREW N. ROSENBERG, ESQ.  
1285 Avenue of the Americas  
New York, NY 10019

For the Bank Lenders: Crowell & Moring LLP  
By: TACIE YOON, ESQ.  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004

For Asbestos Property Damage Claimants: Scott Law Group  
By: DARRELL SCOTT, ESQ.  
1001 East Main Street, Suite 500  
Sevierville, TN 37864

For National Union Fire Insurance Co.: Zeichner Ellman & Krause, LLP  
By: ROBERT GUTTMANN, ESQ.  
575 Lexington Avenue  
New York, NY 10022

For the Future Claimants Representatives: Orrick, Herrington & Sutcliffe,  
LLP  
By: DEBRA FELDER, ESQ.  
JOSHUA CUTLER, ESQ.  
Washington Harbour  
3050 K Street, N.W.  
Washington, D.C. 20007

For Federal Insurance Company: Cozen O'Connor  
By: ILAN ROSENBERG, ESQ.  
1900 Market Street  
Philadelphia, PA 19103

For Official Committee of Asbestos Personal Injury Claimants: Anderson Kill & Olick  
By: ROBERT M. HORKOVICH, ESQ.  
1251 Avenue of the Americas  
New York, NY 10020-1186

For Grace Certain Cancer Claimants: Montgomery, McCracken, Walker &  
Rhoads, LLP  
By: NATALIE D. RAMSEY, ESQ.  
300 Delaware Avenue, Ste. 750  
Wilmington, DE 19801

J&J COURT TRANSCRIBERS, INC.

TELEPHONIC APPEARANCES (CONT'D):

For David T. Austern,  
the Future Claimants'  
Representative: Phillips, Goldman & Spence, P.A.  
By: JOHN C. PHILLIPS, ESQ.  
1200 North Broom Street  
Wilmington, DE 19806

By: DAVID T. AUSTERN

For Allstate Insurance: Cuyler Burk, LLP  
By: STEFANO CALOGERO, ESQ.  
ANDREW K. CRAIG, ESQ.  
Parsippany Corporate Center  
Four Century Drive  
Parsippany, NJ 07054

For the Asbestos  
Creditors Committee: Ferry Joseph & Pearce, P.A.  
By: THEODORE TACCONELLI, ESQ.  
824 Market Street, Suite 19899  
Wilmington, DE 19899

For Ford, Marrin,  
Esposito, Witmeyer  
& Gleser: Ford, Marrin, Esposito, Witmeyer &  
Gleser  
By: SHAYNE SPENCER, ESQ.  
ELIZABETH DeCRISTAFANO, ESQ.  
Wall Street Plaza  
New York, NY 10005

For Official Committee  
of Unsecured Creditors: Duane Morris, LLP  
By: MICHAEL LASTOWSKI, ESQ.  
1100 North Market Street, Suite 1200  
Wilmington, DE 19801-1246

For Official Committee  
of Asbestos Property  
Damage Claimants: Brandi Law Firm  
By: THOMAS J. BRANDI, ESQ.  
TERENCE D. EDWARDS, ESQ.  
44 Montgomery St., Suite 1050  
San Francisco, CA 94104

Lieff, Cabraser, Heimann & Bernstein  
By: ELIZABETH J. CABRASER, ESQ.  
Embarcadero Center West  
275 Battery Street, Suite 3000  
San Francisco, CA 94111

J&J COURT TRANSCRIBERS, INC.

Return

TELEPHONIC APPEARANCES (CONT'D):

For Official Committee: Riker, Danzig, Scherer, Hyland &  
of Asbestos Property Perretti, LLP

Damage Claimants: By: TARA MONDELLI, ESQ.  
CURTIS PLAZA, ESQ.  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962

For the Libby Claimants: Cohn, Whitesell & Goldberg, LLP  
By: CHRISTOPHER M. CANDON, ESQ.  
101 Arch Street  
Boston, MA 02110

For the Libby Claimants: Landis, Rath & Cobb, LLP  
By: KERRI K. MUMFORD, ESQ.  
JAMES S. GREEN, JR., ESQ.  
919 Market Street, Suite 1800  
Wilmington, DE 19899

For the Bank Lenders: Landis, Rath & Cobb, LLP  
By: RICHARD COBB, ESQ.  
919 Market Street, Suite 1800  
Wilmington, DE 19899

For the PD Committee: Speights & Runyan  
By: DANIEL SPEIGHTS, ESQ.  
MARION FAIREY, ESQ.  
ALAN RUNYAN, ESQ.  
200 Jackson Avenue, East  
Hampton, SC 29924

For Everest Reinsurance Company, et al.: Marks, O'Neill, O'Brien & Courtney LLP  
By: BRIAN L. KASPRZAK, ESQ.  
JOHN D. MATTEY, ESQ.  
913 North Market Street  
Suite 800  
Wilmington, DE 19801

For Murray Capital Management Murray Capital Management, Inc.  
By: MARTI MURRAY

For Normandy Hill Capital, LLP: Normandy Hill Capital, LLP  
By: MATTHEW CANTOR

J&J COURT TRANSCRIBERS, INC.

TELEPHONIC APPEARANCES (CONT'D):

For Anderson Memorial Hospital:	Kozyak, Tropin & Throckmorton, PA By: JOHN W. KOZYAK, ESQ. 2525 Ponce de Leon, 9th Floor Miami, Florida 33134
For ZAI Claimants & various law firms:	Hogan Firm Attorneys at Law By: DANIEL K. HOGAN, ESQ. 1311 Delaware Avenue Wilmington, DE 19801
For the U.S. Trustee:	Office of the U.S. Trustee By: DAVID KLAUDER, ESQ. 844 King Street, Suite 2313 Wilmington, DE 19801
For Arrowwood Indemnity Co.:	Bifferato Gentilotti LLC By: GARVAN McDANIEL, ESQ. 800 North King Street Wilmington, DE 19801
For AXA Belgium:	Mendes & Mount By: ANNA NEWSOM, ESQ. 750 Seventh Avenue New York, NY 10019
For Royal Insurance:	Wilson Elser Moskowitz Edelman & Dicker, LLP By: CARL PERNICONE, ESQ. 150 East 42nd Street New York, NY 10017
For Official Committee of Asbestos Property Claimants:	Richardson Patrick Westbrook & Brickman, P.C. By: EDWARD J. WESTBROOK, ESQ. 174 East Bay Street Charleston, SC 29401
For Dow Jones News Wires:	Dow Jones News Wires By: PEG BRICKLEY
For the Equity Committee:	Kramer Levin Naftalis & Frankel By: DAVID E. BLABEY, JR., ESQ. 919 Third Avenue New York, NY 10022

J&J COURT TRANSCRIBERS, INC.

TELEPHONIC APPEARANCES (CONT'D):

For Hartford Financial Service Group: Wilmer Wilmer Cutler Pickering Hale & Dorr, LLP

By: MELANIE R. DRITZ, ESQ.  
399 Park Avenue  
New York, NY 10022

For Travelers Casualty Surety Company: Morris Nichols Arsht & Tunnell, LLP

By: MATTHEW B. HARVEY  
1201 N. Market Street  
PO Box 1347  
Wilmington, DE 19899-1347

For Asbestos Property Damage Claimants:

Pryor Cashman, LLP  
By: RICHARD LEVY, ESQ.  
410 Park Avenue  
New York, NY 10022

For David T. Austern,  
Future Claimants'  
Representative:

Lincoln International, LLC  
By: JOSEPH RADECKI

J&J COURT TRANSCRIBERS, INC.

I N D E X

<u>WITNESSES:</u>	<u>PAGE</u>
ELIHU INSELBUCH	
Direct Examination by Mr. Lockwood	31
Cross Examination by Mr. Giannotto	46
Cross Examination by Mr. Cassada	78
Cross Examination by Mr. Monaco	107
Cross Examination by Ms. Casey	112
Cross Examination by Mr. Davis	132
Cross Examination by Mr. Speights	139
Redirect Examination by Mr. Lockwood	164
Recross Examination by Mr. Giannotto	167
RICHARD C. FINKE	
Direct Examination by Ms. Esayian	169
Cross Examination by Mr. Plevin	185
Cross Examination by Mr. Brown	186
Cross Examination by Mr. Cohn	229
Redirect Examination by Ms. Esayian	235
JAY HUGHES	
Direct Examination by Mr. Bernick	237
Direct Examination by Mr. Finch	268
Cross Examination by Mr. Lewis	281
Cross Examination by Mr. Phillips	290
Cross Examination by Mr. Monaco	295
 <u>EXHIBITS</u>	
CNA-13 Order/ <u>Armstrong World Industries</u>	<u>I.D.</u> <u>EVD.</u>
CNA-26 annual report	--      55
CNA-10 annual report	62      64
PP-505-1, 505-2, 505-3 505-4	64      65
PP-1 Settlement agreement	--      183
FCR-1 to 13 Documents	--      239
State of Montana 149 Proof of claim	--      290
	--      304

Inselbuch - Cross/Monaco

110

1 amount of an indirect personal injury trust claim to the amount  
2 paid to the underlying asbestos plaintiff, correct?

3 A Yes.

4 Q Okay. Would you also agree that there is no specific  
5 provision within the TDP that provides for payment of  
6 attorneys' fees or other defense costs for indirect claims?

7 A Neither for direct claims or indirect claims. However, if  
8 you look at -- it's a little different when you get to 5.12 and  
9 5.13. We're revealing about indemnification responsibilities,  
10 but generally speaking under 5.6, that's correct.

11 Q Okay. Now, the attorney for Garlock asked you a series of  
12 questions regarding the maximum allowable amount in a  
13 hypothetical if a co-defendant obtains a judgment in excess of  
14 that maximum allowable amount, and would you agree that because  
15 of the assignment of a maximum value for asbestos -- direct  
16 asbestos personal injury claims, that that could negatively  
17 impact a holder of an indirect trust claim if they receive a  
18 judgment in an amount excess of the maximum value?

19 A Sorry, I couldn't follow that.

20 Q Going through the line of questioning that Garlock's  
21 attorney went through with you obtaining a judgment in excess  
22 of a maximum value -- there's a maximum value assigned to --

23 A The four fifty he was talking about.

24 Q Right. Right. So, if a co-defendant obtains a judgment  
25 for a million dollars against Grace or --

J&J COURT TRANSCRIBERS, INC.

Return

Inselbuch - Cross/Monaco

111

1 A Against the trust.

2 Q Right. Trust, or there is a judgment rendered against it  
3 for a million dollars, against the co-defendant, would that  
4 impact negatively their ability to -- the maximum amount affect  
5 their ability to obtain monies in excess of the maximum  
6 allowable amount?

7 A Well, I think you've mixed up some apples and oranges. I  
8 think I testified to Garlock's counsel that if you -- in a  
9 litigation against the trust after you've exited through the  
10 ADR process in which the co-defendant or the indirect claimant  
11 gets a recovery in excess of the maximum value, the recovery is  
12 limited to the maximum value. Just because the co-defendant  
13 suffers a verdict in the tort system against it, that's in  
14 excess of the maximum value, is not relevant to this question  
15 because what this -- what the TDP is trying to evaluate is the  
16 contribution claim which will not be as much as whatever the  
17 verdict might be against the co-defendant in the tort system  
18 in the litigation with the plaintiff.

19 Q Okay. But, under my scenario that I've put to you where a  
20 judgment is rendered against a co-defendant and now has a  
21 contribution indemnification claim that exceeds the maximum  
22 allowed amount, could it have a negative impact based on how  
23 the TDP is set up currently?

24 A It can only recover up to the maximum value at the payment  
25 percentage.

J&amp;J COURT TRANSCRIBERS, INC.

Return

Inselbuch - Cross/Monaco

112

1 Q Okay.

2 A If that is a negative impact, it is a negative impact.

3 MR. MONACO: Thank you. No further questions, Your  
4 Honor.

5 CROSS EXAMINATION

6 BY MS. CASEY:

7 Q Linda Casey on behalf of BNSF Railway Company. Good  
8 morning, Mr. Inselbuch.

9 A Good morning.

10 Q The TDP treats indirect PI trust claimants as standing in  
11 the shoes of the direct claimant and restricts the indirect PI  
12 trust claimant to an amount no greater than what the direct  
13 claimant could have received under the TDP, correct?

14 A Under 5.6, yes.

15 Q And this restriction on the right of the indirect PI trust  
16 claimant to receive more than what the direct claimant would  
17 have been able to receive under the TDP would prevent an award  
18 to an indirect PI trust claimant who can establish a  
19 contractual indemnification agreement that obligates one or  
20 more of the debtors to indemnify the indirect PI trust claimant  
21 for attorneys' fees and defense costs, correct?

22 A I don't think so.

23 Q Where in the TDP would the indirect PI trust claimant be  
24 entitled to an award for their contractual right to get  
25 indemnified for attorneys' fees and defense costs?

J&J COURT TRANSCRIBERS, INC.

Return

Inselbuch - Cross/Monaco

113

1 A Your hypothetical is, a co-defendant with a contractual  
2 indemnity right?

3 Q Either a co-defendant or an entity who is sued on their  
4 own and has a right back to a contractual indemnity to one or  
5 more of the debtors?

6 A Where would that come from?

7 Q You are aware that BNSF has asserted that it has a  
8 contractual agreement between BNSF Railway and W.R. Grace and  
9 its predecessors concerning the operations of the side  
10 agreement and the conveyor belt at the Zonolite mine, correct?

11 A Yeah.

12 Q And you are aware that W -- that BNSF has asserted that it  
13 has a contractual right for full indemnification for any claims  
14 related to that, including claims that arise out of BNSF's own  
15 negligence?

16 A I'm sorry?

17 Q That the -- that BNSF asserts that the contractual  
18 indemnity protects BNSF or obligates Grace to indemnify BNSF  
19 for claims asserting that BNSF itself were negligent, and  
20 therefore BNSF could be the sole named party in the lawsuit?

21 A That would not necessarily give rise to an indirect trust  
22 claim.

23 Q That would not be channeled to the trust?

24 A It may not give rise to an indirect trust claim.

25 Q So, is it your testimony that if BNSF has a claim under a

J&J COURT TRANSCRIBERS, INC.

Return

Inselbuch - Cross/Monaco

130

1 questioner seems to be assuming that the PI trust claim,  
2 indirect trust claim, definitions do not include indemnity  
3 claims for asbestos PI trust claims. The witness has now  
4 testified, I think four times, maybe five, that they do.

5 MS. CASEY: Your Honor, that's a complete  
6 mischaracterization of what I'm saying. What I'm saying is  
7 that it is, in fact, an indirect PI trust claim and enjoined  
8 and channeled to the Trust. But then the TDP does not permit  
9 the allowance of an award equal to what the contractual  
10 indemnity agreement provides.

11 THE COURT: And the witness has said that, to the  
12 extent that it's an asbestos indirect PI trust claim, it's  
13 going to be treated under Section 5.6. Period. End of story.  
14 So, whatever the maximums are under 5.6 -- if your client  
15 sustains this horrible judgment that exceeds all those maximums  
16 and, in addition to that, has attorneys' fees, it's going to be  
17 capped at the maximums. Do I understand that correctly?

18 THE WITNESS: Yes, ma'am.

19 G And that that maximum is designed to be Grace's several  
20 share of the liability, the rough justice several share of the  
21 liability?

22 A No. No. The scheduled value is designed to be Grace's  
23 rough justice share of several liability. The maximum is  
24 something beyond that.

25 Q Well, let's explore whether BNSF will be able to get the

J&J COURT TRANSCRIBERS, INC.

Return

Inselbuch - Cross/Monaco

131

1 maximum value. The maximum value is only available to direct  
2 claimants who establish a right to an extraordinary claim,  
3 correct?

4 A Wrong.

5 Q Where else is a claimant entitled to go up to the maximum  
6 value?

7 A In individual review.

8 Q But in the individual review, they have to establish a  
9 right to an extraordinary claim?

10 A Wrong. If they establish the right to be treated as an  
11 extraordinary claimant, the maximum value is multiplied by  
12 either five or eight percent times.

13 Q I apologize. I'm wrong. The eight times multiplier which  
14 was designed to deal with the situation where a claimant can  
15 establish that 95 percent of its exposure was to Grace asbestos  
16 --

17 A And they can't collect from you.

18 Q And they can't collect from me.

19 A Right.

20 Q So, as soon as they collect from me and I come in and I'm  
21 restricted to what the direct claimant could have recovered,  
22 I'm never entitled to that eight times multiplier, am I?

23 A That's correct. I would assume not.

24 Q So, I would, in fact, be limited to the scheduled value?

25 A Wrong. You would be limited by the maximum values.

J&J COURT TRANSCRIBERS, INC.

Return

Inselbuch - Cross/Monaco

132

1 Q The maximum value which does not include the eight times  
2 multiplier?

3 A Correct.

4 Q And the maximum value is still intended to be the rough  
5 justice several share under certain circumstances?

6 A Wrong.

7 Q What is it intended to be?

8 A It's -- the rough justice several share is what the  
9 schedule value provides. The maximum value provides room when  
10 cases are different for one reason or another and can prove  
11 under the indirect -- under the provisions here for individual  
12 review, the various criteria can prove up a greater value,  
13 which would be more than the rough justice several liability of  
14 Grace.

15 Q But it would be potentially less than the actual liability  
16 in the tort system?

17 A Everything is potentially less than something.

18 Q And when a party has entered into a contractual indemnity  
19 in which Grace has agreed to the full indemnification of all  
20 claims, BNSF is nevertheless not entitled to assert -- to an  
21 award equal to what it's contractual rights are? It is limited  
22 by the TDP?

23 A There's no way to know that. If you do a good job at  
24 trial, you might come in well below the maximum. I don't know.

25 Q The question is, though, since the TDP limits BNSF to the

J&J COURT TRANSCRIBERS, INC.

Return